

ASSEMBLY BILL

No. 1109

Introduced by Assembly Member Shirley Horton

February 22, 2005

An act to amend Section 6609.1 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1109, as introduced, Shirley Horton. Sexually violent predator: conditional release program.

Existing law requires the Director of Corrections, prior to the release of a person from custody resulting from conviction for certain crimes of a sexual nature against 2 or more victims, to refer the person to the State Department of Mental Health for evaluation. The law authorizes civil commitment, as a sexually violent predator, to the custody of the State Department of Mental Health for treatment of the person's diagnosed mental disorder if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged.

Under existing law, if the Director of Mental Health determines that the committed person's diagnosed mental disorder has so changed that the person is no longer likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director is required to forward a report and recommendation for conditional release, and if the court determines that the person does not pose a danger, it is required to order a one-year community placement with an appropriate forensic conditional release program operated by the state.

Existing law requires that a nonparolee who is conditionally released under these provisions be placed in the county of the domicile, as defined, unless the court finds that extraordinary

circumstances, as defined, require otherwise. The law requires the department to notify certain persons of the proposed community placement, including, but not limited to, the sheriff or chief of police.

This bill would require the local officials be provided with notice 65 days prior to the hearing on community placement and would require the local officers to notify the public within 60 days of the hearing, thereby imposing a state-mandated local program. The bill would make other procedural changes regarding the proposed community placement.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6609.1 of the Welfare and Institutions
2 Code is amended to read:
3 6609.1. (a) (1) When the State Department of Mental Health
4 makes a recommendation to the court for community outpatient
5 treatment for any person committed as a sexually violent
6 predator, or when a person who is committed as a sexually
7 violent predator pursuant to this article has petitioned a court
8 pursuant to Section 6608 for conditional release under
9 supervision and treatment in the community pursuant to a
10 conditional release program, or has petitioned a court pursuant to
11 Section 6608 for subsequent unconditional discharge, and the
12 department is notified, or is aware, of the filing of the petition,
13 and when a community placement location is recommended or
14 proposed, the department shall notify the sheriff or chief of
15 police, or both, the district attorney, or the county's designated
16 counsel, that have jurisdiction over the following locations:
17 (A) The community in which the person may be released for
18 community outpatient treatment.

1 (B) The community in which the person maintained his or her
2 last legal residence as defined by Section 3003 of the Penal
3 Code.

4 (C) The county that filed for the person's civil commitment
5 pursuant to this article.

6 (2) The department shall also notify the Sexually Violent
7 Predator Parole Coordinator of the Department of Corrections, if
8 the person is otherwise subject to parole pursuant to Article 1
9 (commencing with Section 3000) of Chapter 8 of Title 1 of Part
10 3 of the Penal Code. The department shall also notify the
11 Department of Justice.

12 (3) The notice shall be given when the department or its
13 designee makes a recommendation under subdivision (e) of
14 Section 6608 or proposes a placement location without making a
15 recommendation, or when any other person proposes a placement
16 location to the court and the department or its designee is made
17 aware of the proposal.

18 (4) The notice shall be given at least 15 days prior to the
19 department's submission of its recommendation to the court in
20 those cases in which the department recommended community
21 outpatient treatment under Section 6607, or in which the
22 department or its designee is recommending or proposing a
23 placement location, or in the case of a petition or placement
24 proposal by someone other than the department or its designee,
25 within 48 hours after becoming aware of the petition or
26 placement proposal.

27 *(A) No later than 65 days prior to the hearing on proposed*
28 *placement, the State Department of Mental Health or its*
29 *contractor shall notify the entities or individuals set forth in this*
30 *subdivision of the proposed placement and shall include the*
31 *information specified in this section.*

32 *(B) Within 60 days prior to the hearing on proposed*
33 *placement, local law enforcement or the sheriff or the district*
34 *attorney shall notify the public of the information set forth in this*
35 *section.*

36 *(C) Fifteen days prior to the hearing on proposed placement,*
37 *the public comment and designated agency comment period shall*
38 *end.*

1 (D) *Ten days prior to the hearing on proposed placement, the*
2 *State Department of Mental Health's public and court responses*
3 *described in subdivision (b) are due.*

4 (5) The notice shall state that it is being made under this
5 section and include all of the following information concerning
6 each person committed as a sexually violent predator who is
7 proposed or is petitioning to receive outpatient care in a
8 conditional release program in that city or county:

9 (A) The name, proposed placement address, date of
10 commitment, county from which committed, proposed date of
11 placement in the conditional release program, fingerprints, and a
12 glossy photograph no smaller than 3 1/8 X 3 1/8 inches in size, or
13 clear copies of the fingerprints and photograph.

14 (B) The date, place, and time of the court hearing at which the
15 location of placement is to be considered and a proof of service
16 attesting to the notice's mailing in accordance with this
17 subdivision.

18 (C) A list of agencies that are being provided this notice and
19 the addresses to which the notices are being sent.

20 (b) Those agencies receiving the notice referred to in
21 paragraphs (1) and (2) of subdivision (a) may provide written
22 comment to the department and the court regarding the
23 impending release, placement, location, and conditions of
24 release. All community agency comments shall be combined and
25 consolidated. In addition, a single agency in the community of
26 the specific proposed or recommended placement address may
27 suggest appropriate, alternative locations for placement within
28 that community. The State Department of Mental Health shall
29 issue a written statement to the commenting agencies and to the
30 court within 10 days of receiving the written comments with a
31 determination as to whether to adjust the release location or
32 general terms and conditions, and explaining the basis for its
33 decision. In lieu of responding to the individual community
34 agencies or individuals, the department's statement responding to
35 the community comment shall be in the form of a public
36 statement.

37 (c) The agencies' comments and department's statements shall
38 be considered by the court which shall, based on those comments
39 and statements, approve, modify, or reject the department's
40 recommendation or proposal regarding the community or specific

1 address to which the person is scheduled to be released or the
2 conditions that shall apply to the release if the court finds that the
3 department's recommendation or proposal is not appropriate.

4 (d) (1) When the State Department of Mental Health makes a
5 recommendation to pursue recommitment, makes a
6 recommendation not to pursue recommitment, or seeks a judicial
7 review of commitment status pursuant to subdivision (f) of
8 Section 6605, of any person committed as a sexually violent
9 predator, it shall provide written notice of that action to the
10 sheriff or chief of police, or both, and to the district attorney, that
11 have jurisdiction over the following locations:

12 (A) The community in which the person maintained his or her
13 last legal residence as defined by Section 3003 of the Penal
14 Code.

15 (B) The community in which the person will probably be
16 released, if recommending not to pursue recommitment.

17 (C) The county that filed for the person's civil commitment
18 pursuant to this article.

19 (2) The State Department of Mental Health shall also notify
20 the Sexually Violent Predator Parole Coordinator of the
21 Department of Corrections, if the person is otherwise subject to
22 parole pursuant to Article 1 (commencing with Section 3000) of
23 Chapter 8 of Title 1 of Part 3 of the Penal Code. The State
24 Department of Mental Health shall also notify the Department of
25 Justice. The notice shall be made at least 15 days prior to the
26 department's submission of its recommendation to the court.

27 (3) Those agencies receiving the notice referred to in this
28 subdivision shall have 15 days from receipt of the notice to
29 provide written comment to the department regarding the
30 impending release. Those comments shall be considered by the
31 department, which may modify its decision regarding the
32 community in which the person is scheduled to be released,
33 based on those comments.

34 (e) (1) If the court orders the release of a sexually violent
35 predator, the court shall notify the Sexually Violent Predator
36 Parole Coordinator of the Department of Corrections. The
37 Department of Corrections shall notify the Department of Justice,
38 the State Department of Mental Health, the sheriff or chief of
39 police or both, and the district attorney, that have jurisdiction
40 over the following locations:

1 (A) The community in which the person is to be released.

2 (B) The community in which the person maintained his or her
3 last legal residence as defined in Section 3003 of the Penal Code.

4 (2) The Department of Corrections shall make the notifications
5 required by this subdivision regardless of whether the person
6 released will be serving a term of parole after release by the
7 court.

8 (f) If the person is otherwise subject to parole pursuant to
9 Article 1 (commencing with Section 300) of Chapter 8 of Title 1
10 of Part 3 of the Penal Code, to allow adequate time for the
11 Department of Corrections to make appropriate parole
12 arrangements upon release of the person, the person shall remain
13 in physical custody for a period not to exceed 72 hours or until
14 parole arrangements are made by the Sexually Violent Predator
15 Parole Coordinator of the Department of Corrections, whichever
16 is sooner. To facilitate timely parole arrangements, notification to
17 the Sexually Violent Predator Parole Coordinator of the
18 Department of Corrections of the pending release shall be made
19 by telephone or facsimile and, to the extent possible, notice of the
20 possible release shall be made in advance of the proceeding or
21 decision determining whether to release the person.

22 (g) The notice required by this section shall be made whether
23 or not a request has been made pursuant to Section 6609.

24 (h) The time limits imposed by this section are not applicable
25 when the release date of a sexually violent predator has been
26 advanced by a judicial or administrative process or procedure
27 that could not have reasonably been anticipated by the State
28 Department of Mental Health and where, as the result of the time
29 adjustments, there is less than 30 days remaining on the
30 commitment before the inmate's release, but notice shall be
31 given as soon as practicable.

32 (i) In the case of any subsequent community placement or
33 change of community placement of a conditionally released
34 sexually violent predator, notice required by this section shall be
35 given under the same terms and standards as apply to the initial
36 placement, except in the case of an emergency where the
37 sexually violent predator must be moved to protect the public
38 safety or the safety of the sexually violent predator. In the case of
39 an emergency, the notice shall be given as soon as practicable,

1 and the affected communities may comment on the placement as
2 described in subdivision (b).

3 (j) The provisions of this section are severable. If any
4 provision of this section or its application is held invalid, that
5 invalidity shall not affect other provisions or applications that can
6 be given effect without the invalid provision or application.

7 SEC. 2. If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.